

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the	)	MB Docket No. 02-277
Commission’s Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to Section 202 of )	)	
the Telecommunications Act of 1996	)	
	)	
Cross-Ownership of Broadcast Stations and	)	MM Docket No. 01-235
Newspapers	)	
	)	
Rules and Policies Concerning Multiple	)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations	)	
in Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

**COMMENTS ON NOTICE OF PROPOSED RULE MAKING**

**FCC 02-249**, Released September 23, 2002

Because of the interrelated nature of its many media ownership rules, the FCC is examining in this NPRM almost all its rules that involve ownership of broadcast media, pursuant to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), or the “1996 Act.” Because it is important that (1) the FCC’s stated goals and principles are consistent with each one of its ultimate findings in this matter, and (2) all accumulated data is analyzed with these goals and principles in mind, this filing points out apparent contradictions in logic in the NPRM, and faulty methodology, or at least misleading analyses, found in the Media Ownership Working Group (MOWG) Studies released in conjunction with this Docket.

**The FCC’s Guiding Principles in Media Ownership**

It is understood that the 1996 Act fundamentally changed the way the FCC approaches its ownership rules; that is, it is the FCCs burden to empirically justify, every two years, why and how the ownership of broadcast media should be regulated. In spite of this, there should be no question, for example, that the “necessary in the public interest” language found in § 202(h) of the 1996 Act is strong

enough to subvert the First Amendment-based principles as articulated by the Commission itself.

On their face, the Commission's important public interest goals of diversity, competition and localism in media ownership clearly embody the purpose and intent of the First Amendment. The corporations representing the broadcast media each have certain First Amendment rights to what they choose to disseminate; however, the industry as a whole must understand that its licenses are provided to them as part of the public trust, and the associated *quid pro quo* goes well beyond the dollars each pays to use their particular portion of the electromagnetic spectrum.

The fairness doctrine and other content-based regulation is long-gone, but the Commission must continue to do its utmost best to serve the American people with the highest and most rigorous interpretation of First Amendment rights of individual, natural persons before the courts. Although the Commission states that it has long embraced the values of diversity, competition and localism as the foundation of its ownership rules and policies, it cannot continue to allow the several thousand owners of broadcast licenses to assert their First Amendment rights to the detriment of the other 260 million-plus U.S. citizens.

The Federal Communications Commission represents the interests of the American people; however, when the Commission on one hand insists that the more than 180 questions it asks in this NPRM be answered with "comments based on well-established economic theory and empirical evidence," and on the other hand allows only 60 days after the release of its MOWG Reports to file these comments (recently extended by 30 days) claiming the short turnaround as necessary because of the importance of these Dockets, it gives one pause. This complaint, with this and many other rationale, has already been heard and addressed by the Commission; however, for it to state in this NPRM that such empirical data is expensive and time-consuming to collect and then to expect commentators whose resources are limited to be able to successfully build their public interest and First Amendment arguments against those who make their living and investment income from owning thousands of media outlets, seems terribly disingenuous.

If the Commission wanted to demonstrate its commitment to its media ownership principles, it would have provided at least one year for comments, scheduled several public hearings made available to

radio and television, and invested many more dollars in empirical studies that could be used to withstand court challenges to the public interest, such as *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002) and *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, *rehearing granted*, 293 F.3d 537 (D.C. Cir. 2002) that have contributed to the erosion of the FCC's ownership rules.

Further evidence of the Commission's commitment to the civic principles underlying the First Amendment protections to individual natural persons would have been to find a very different ratio of the words "consumer" to "citizen" in this NPRM. (The word 'consumer' or 'consumers' appears 47 times; the word "citizen" or 'citizens' only three.) The implication here is that the Commission wrongly views the people of the United States first as consumers, then as citizens. This, of course, is not anywhere near the intent of the Founding Fathers of this great nation, nor should the FCC allow the very large broadcast media industry to control the agenda and to invert the Commission's civic priorities and responsibilities.

### **Media Ownership Working Group Studies**

The themes, criteria and measures chosen to be studied and analyzed by the various working groups are ostensibly those that will provide the Commission with data to defend, or debunk, its ownership rules. If we are to take the Commission at its word, this same data and analyses should provide us with measures of diversity, competition and localism. A look at the MOWG studies reveals an extensive, in-depth analysis of only one of these three, competition, and a rather mis-directed and half-hearted analyses of the other two.

For example, Study No. 5, *Program Diversity and the Program Selection Process on Broadcast Network Television* by Mara Einstein, looks at "diversity" in an odd way: by basically counting genres during prime time and looking at whether there is a correlation between the relative handful of producers and the type of prime-time programs. Rather than studying the diversity of content of the programs regardless of genre, Einstein perpetuates the faulty paradigm that assumes that an increased number of entertainment choices on prime-time television is a proper indicator of increased diversity. The FCC should insist on taking the higher-ground based on its highest principles, and instead commission studies that

measure viewpoint diversity, outlet diversity and source diversity. Viewpoint diversity in particular, the Commission claims, is the “touchstone” of its ownership rules and policies, because it is “fully committed to preserving citizens’ access to a diversity of viewpoints through the media.” (§ 35)

Another example of a mis-directed “diversity” examination by a MOWG is Study No. #2, *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* by David Pritchard. The study’s stated purpose was to determine “whether information and opinion about the 2000 presidential campaign in cross-owned media had a coordinated or consistent slant in favor of one major-party candidate or the other, and if so, did the slant reflect the interest of the media corporation that owned the newspaper-television combination? In other words, the research looked for evidence of whether the news and opinion disseminated by commonly owned news organizations in a community appears to be slanted, consciously or unconsciously, toward the interests of the corporations that own the news organizations.”

Aside from the fact that the results of the study were inconclusive (of the ten cross-owned media combinations looked at, half presented divergent views and half presented similar views), using such a high-profile, national, quadrennial event to measure diversity ignores the other ninety-nine percent of news coverage, news analysis and other civic-related programming decisions that these media outlets make day in and day out. Is there diversity in what they choose to cover? Is there diversity in their opinion and editorial? Do their co-owned television broadcast stations even have opinions and editorials and do they provide an opportunity for other voices to be heard?

Localism gets short shrift in the working group studies. Two of the three MOWG studies with “local” in their titles measure advertising. Study #7, *The Measurement of Local Television News and Public Affairs Programs* by Spavins, Denison, Roberts and Frenette is the only one that attempts to approach the question of whether network owned-and-operated (O&O) stations offer more or less news programs than, or somehow influence similar programming by, competing “affiliates,” or non-O&O stations, in the same market.

This study examines the 27 out of 258 media markets in which there is an O&O network television station with a competing non-O&O affiliate. Although it does not contain statistically-significant results, the study nonetheless concludes that competition between these two types of stations tends to increase the quantity and quality of news and public affairs programming, as does the situation where an affiliate is co-owned with newspapers.

Does this study provide data that helps determine whether the other 231 media markets would benefit or be harmed by eliminating or relaxing cross-ownership rules? Probably not. How does this study's use of the Radio and Television News Directors Association's Edward R. Morrow (sic) peer awards as an indicator of "quality" hold up against the fact that the independent School of Journalism of Columbia University, which the study also cites, has not awarded any station its highest A. I. DuPont Golden Baton award for the past 10 years?

Lastly, Study #1, *A Comparison of Media Outlets and Owners For Ten Selected Markets (1960, 1980, 2000)* by Roberts, Frenette and Stearns, initially appears to have statistical validity, using an interval skipping method to select the ten study markets from the 285 Arbitron radio markets. The authors' reporting of the results, and the conclusions they arrive at, are subjective and misleading. The most egregious of the report's faults is that it chooses to study these markets at 20-year intervals. The United States Census, for comparison, has not measured U.S. demographics at 20-year intervals since 1840, rather choosing a 10-year interval to chronicle changes in our population, with smaller samplings taken in each fifth year between.

Changes in the broadcast media markets over the past twenty years has been extraordinary, and for a study to report increases in ownership in such terms as "a whopping 533% in Myrtle Beach SC with an average increase of almost 200% across all ten markets," is to ignore, with great distracting flourish, the fact that most of those increases occurred between 1960 and 1980 and that there was between 1980 and 2000, at best, insignificant increases in ownership and numbers of broadcast outlets, and, at worst, decreases in both areas. The FCC made few changes in its ownership rules during the three decades between 1960 and

1990, relative to the years following its 1989 ruling that relaxed previous rulings prohibiting cross-ownership of TV and radio.

Here are a few questions that represent the direction and type of inquiry that should have been pursued by MOWGs but have not. Some address ownership directly, others address programming; however, all inter-relate to the major principles of localism and diversity as interpreted through the lens of the First Amendment. They apply equally to television and radio outlets, and the list is not intended to be either exhaustive or exclusive of others that may arise from these comments.

1. What percentage of the station's programming is locally-originated and what percentage is purchased from outside sources?
2. What are the types of locally-originated programming produced by the station?
3. To what extent are diverse points of view presented in programming on commonly-owned stations? Criteria to determine "diverse points of view" might include such measures as race, ethnicity, political affiliation, gender, sexual orientation, socio-economic status, standing on civic issues, and so on.
4. What amount and type of investigative journalism is conducted by the station?
5. What opportunities are provided to citizens to express their views on the station?
6. What are the number of media outlets per person in each media market?
7. What diversity exists in the nature and type of media outlet owner with regard to race, gender, age and ethnicity?
8. Has there been an increase or decrease since 1990 in the number of individual CEOs, COOs and board directors that manage broadcast media outlets? Does this indicate a change in diversity and/or localism?
9. Since 1990, has there been a change in quality and quantity of civic public affairs and news programming attributable to the relaxation or elimination of ownership rules?

I urge the Commission to consider the strong possibility that the Media Ownership Working Groups studies are not predicated on the same diversity and localism principles that the Commission itself claims to hold in highest regard. Furthermore, if the American public is to hold faith in the Commission that it is there to advance First Amendment values in support of an informed citizenry as key to a strong democracy, then the Commission must make a sincere and distinguished effort to collect as much data as possible, in as many forms and sources as possible, and take as much time as necessary so that our voices may be heard. It must also assert its highest principles before the courts in order to protect the diversity and localism of our electronic media so that it not only serves the smallest of communities, but the country as a whole.

I thank the Commission for this opportunity to respectfully submit these comments this, the 4<sup>th</sup> day of December, in the year 2002.

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